

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1317

Introduced by Assembly Member Salas

(Principal coauthor: Assembly Member Roger Hernández)

**(Coauthors: Assembly Members Alejo, Calderon, Dodd, Frazier,
Gomez, Gonzalez, McCarty, Rodriguez, and Weber)**

**(Coauthors: Senators Anderson, Beall, Cannella, Galgiani, Hall, Hueso,
Lara, Mendoza, and Vidak)**

February 27, 2015

~~An act to add Article 2 (commencing with Section 92010) to Chapter 1 of Part 57 of Division 9 of Title 3 of the Education Code, relating to public postsecondary education. An act to amend Section 2699.3 of the Labor Code, relating to employment, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1317, as amended, Salas. ~~Public postsecondary education: executive officer compensation. Labor Code Private Attorneys General Act of 2004.~~

Existing law, the Labor Code Private Attorneys General Act of 2004, authorizes an aggrieved employee to bring a civil action to recover specified civil penalties that would otherwise be assessed and collected by the Labor and Workforce Development Agency on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act provides the employer

with the right to cure certain violations before the employee may bring a civil action, as specified. For other violations, the act requires the employee to follow specified procedures before bringing an action.

This bill would provide the employer with the right to cure any violation of the Labor Code covered by the act before the employee may bring a civil action. That right to cure would be provided before, and in addition to, any other specified procedures the employee is required to follow prior to bringing an action.

Existing law establishes the Department of Industrial Relations within the agency and sets forth its powers and duties, including, but not limited to, fostering, promoting, and developing the welfare of wage earnings.

This bill would appropriate \$1,400,000 to the department for deposit into the Labor and Workforce Development Fund for the purpose of establishing 9 new positions to review and investigate private attorneys general cases under the act.

~~Existing law establishes the University of California, which is administered by the Regents of the University of California, as one of the segments of public postsecondary education in this state. Existing law authorizes the regents to employ officers and other employees.~~

~~This bill would request the regents to refrain from using public funds to increase the compensation of any executive officer, as defined, of the University of California, when the amount of mandatory systemwide student fees and tuition of the university has been increased at any time in the immediately preceding 2 years.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2699.3 of the Labor Code is amended to
2 read:

3 2699.3. (a) A civil action by an aggrieved employee pursuant
4 to subdivision (a) or (f) of Section 2699 alleging a violation of any
5 provision listed in Section 2699.5 shall commence only after the
6 following requirements have been met:

7 (1) (A) The aggrieved employee or representative shall give
8 written notice by certified mail to the Labor and Workforce
9 Development Agency and the employer of the specific provisions
10 of this code alleged to have been violated, including the facts and
11 theories to support the alleged violation.

(B) *The employer may cure the alleged violation according to the procedures described in paragraph (2) of subdivision (c). If the alleged violation is not cured within the 33-day period prescribed in paragraph (2) of subdivision (c), in lieu of commencing a civil action, the employee or representative shall notify by certified mail the Labor and Workforce Development Agency and the employer of the failure to cure or, if the employee disputes that the alleged violation has been cured, the employee or representative shall provide notice pursuant to the procedures of subparagraph (A) of paragraph (3) of subdivision (c).*

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 30 calendar days of the postmark date of the notice received pursuant to *subparagraph (B) of paragraph (1)*. Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice given pursuant to *subparagraph (B) of paragraph (1)*, the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to *subparagraph (B) of paragraph (1)*. Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee *or representative* of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within ~~the~~ *that* 158-day period prescribed by ~~subparagraph (A) and this subparagraph~~ or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other

1 than those listed in Section 2699.5 shall commence only after the
2 following requirements have been met:

3 (1) (A) The aggrieved employee or representative shall give
4 notice by certified mail to the Division of Occupational Safety and
5 Health and the employer, with a copy to the Labor and Workforce
6 Development Agency, of the specific provisions of Division 5
7 (commencing with Section 6300) alleged to have been violated,
8 including the facts and theories to support the alleged violation.

9 (B) *The employer may cure the alleged violation according to*
10 *the procedures described in paragraph (2) of subdivision (c). If*
11 *the alleged violation is not cured within the 33-day period*
12 *prescribed in paragraph (2) of subdivision (c), in lieu of*
13 *commencing a civil action, the employee or representative shall*
14 *notify by certified mail the Division of Occupational Safety and*
15 *Health and the employer, with a copy to the Labor and Workforce*
16 *Development Agency, of the failure to cure or, if the employee*
17 *disputes that the alleged violation has been cured, the employee*
18 *or representative shall provide notice pursuant to the procedures*
19 *of subparagraph (A) of paragraph (3) of subdivision (c).*

20 (2) (A) The division shall inspect or investigate the alleged
21 violation pursuant to the procedures specified in Division 5
22 (commencing with Section 6300).

23 (i) If the division issues a citation, the employee may not
24 commence an action pursuant to Section 2699. The division shall
25 notify the aggrieved employee *or representative* and employer in
26 writing within 14 calendar days of certifying that the employer
27 has corrected the violation.

28 (ii) If by the end of the period for inspection or investigation
29 provided for in Section 6317, the division fails to issue a citation
30 and the aggrieved employee disputes that decision, the employee
31 may challenge that decision in the superior court. In such an action,
32 the superior court shall follow precedents of the Occupational
33 Safety and Health Appeals Board. If the court finds that the division
34 should have issued a citation and orders the division to issue a
35 citation, then the aggrieved employee may not commence a civil
36 action pursuant to Section 2699.

37 (iii) A complaint in superior court alleging a violation of
38 Division 5 (commencing with Section 6300) other than those listed
39 in Section 2699.5 shall include therewith a copy of the ~~notice of~~

1 ~~violation~~ *notices* provided to the division and employer pursuant
2 to *subparagraphs (A) and (B) of paragraph (1)*.

3 (iv) The superior court shall not dismiss the action for
4 nonmaterial differences in facts or theories between those contained
5 in the ~~notice of violation~~ *notices* provided to the division and
6 employer pursuant to *subparagraphs (A) and (B) of paragraph (1)*
7 and the complaint filed with the court.

8 (B) If the division fails to inspect or investigate the alleged
9 violation as provided by Section 6309, ~~the provisions of subdivision~~
10 ~~(e) shall apply~~ *aggrieved employee may commence a civil action*
11 *pursuant to the determination of the alleged violation. Section*
12 *2699.*

13 (3) (A) Nothing in this subdivision shall be construed to alter
14 the authority of the division to permit long-term abatement periods
15 or to enter into memoranda of understanding or joint agreements
16 with employers in the case of long-term abatement issues.

17 (B) Nothing in this subdivision shall be construed to authorize
18 an employee to file a notice or to commence a civil action pursuant
19 to Section 2699 during the period that an employer has voluntarily
20 entered into consultation with the division to ameliorate a condition
21 in that particular worksite.

22 (C) An employer who has been provided notice pursuant to this
23 section may not then enter into consultation with the division in
24 order to avoid an action under this section.

25 (4) The superior court shall review and approve any proposed
26 settlement of alleged violations of the provisions of Division 5
27 (commencing with Section 6300) to ensure that the settlement
28 provisions are at least as effective as the protections or remedies
29 provided by state and federal law or regulation for the alleged
30 violation. The provisions of the settlement relating to health and
31 safety laws shall be submitted to the division at the same time that
32 they are submitted to the court. This requirement shall be construed
33 to authorize and permit the division to comment on those settlement
34 provisions, and the court shall grant the division's commentary
35 the appropriate weight.

36 (c) A civil action by an aggrieved employee pursuant to
37 subdivision (a) or (f) of Section 2699 alleging a violation of any
38 provision other than those listed in Section 2699.5 or Division 5
39 (commencing with Section 6300) shall commence only after the
40 following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) (A) *If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency.*

~~(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency.~~

~~Within~~

(B) *Within* 17 calendar days of the postmark date of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee *or representative* and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed

1 with the civil action pursuant to Section 2699. If the agency
2 determines that the alleged violation has been cured, but the
3 employee still disagrees, the employee may appeal that
4 determination to the superior court.

5 (d) The periods specified in this section are not counted as part
6 of the time limited for the commencement of the civil action to
7 recover penalties under this part.

8 *SEC. 2. The sum of one million four hundred thousand dollars*
9 *(\$1,400,000) is hereby appropriated from the General Fund to the*
10 *Department of Industrial Relations for deposit into the Labor and*
11 *Workforce Development Fund for the purpose of establishing nine*
12 *new positions at the Department of Industrial Relations to review*
13 *and investigate cases under the Labor Code Private Attorneys*
14 *General Act of 2004.*

15 ~~SECTION 1. The Legislature finds and declares all of the~~
16 ~~following:~~

17 ~~(a) On November 19, 2014, the Regents of the University of~~
18 ~~California voted on a “five-year stability plan,” which establishes~~
19 ~~annual tuition and student fee increases of up to 5 percent per year~~
20 ~~for both undergraduate and graduate students, with increase levels~~
21 ~~contingent on state funding.~~

22 ~~(b) While increasing tuition costs for students, the regents also~~
23 ~~approved compensation increases of up to 20 percent for several~~
24 ~~chancellors and executives.~~

25 ~~(c) As a public institution designed to serve students, the~~
26 ~~University of California has a responsibility to keep education~~
27 ~~accessible and affordable and to prioritize student needs over~~
28 ~~executive pay.~~

29 ~~(d) The State of California has an interest in holding the~~
30 ~~University of California accountable and maintaining affordability~~
31 ~~in higher education.~~

32 ~~SEC. 2. Article 2 (commencing with Section 92010) is added~~
33 ~~to Chapter 1 of Part 57 of Division 9 of Title 3 of the Education~~
34 ~~Code, to read:~~

35
36 ~~Article 2. Executive Compensation~~
37

38 ~~92010. (a) The Regents of the University of California are~~
39 ~~requested to refrain from using public funds to increase the~~
40 ~~compensation of any executive officer when the amount of~~

1 ~~mandatory systemwide student fees and tuition of the university~~
2 ~~has been increased at any time in the immediately preceding two~~
3 ~~years.~~

4 ~~(b) As used in this section, “executive officer” includes, but is~~
5 ~~not limited to, the President of the University of California, the~~
6 ~~chancellor of an individual campus, a vice president of the~~
7 ~~university, the treasurer or the assistant treasurer of the university,~~
8 ~~the general counsel of the university, and the regents’ secretary.~~

9 ~~(c) Subdivision (a) shall apply only to executive officers that~~
10 ~~enter into or renew contracts for employment with the University~~
11 ~~of California on or after January 1, 2016.~~